

Bruce G. Chapman (State Bar No. 164258)
bchapman@cblh.com
Keith D. Fraser (State Bar No. 216279)
kfraser@cblh.com
CONNOLLY BOVE LODGE & HUTZ LLP
333 S. Grand Avenue, Suite 2300
Los Angeles, CA 90071
Telephone: (213) 787-2500; Facsimile: (213) 687-0498

Dianne B. Elderkin (admitted *pro hac vice*)
delderkin@akingump.com
Barbara L. Mullin (admitted *pro hac vice*)
bmullin@akingump.com
Steven D. Maslowski (admitted *pro hac vice*)
smaslowski@akingump.com
Angela Verrecchio (admitted *pro hac vice*)
averrecchio@akingump.com
Matthew A. Pearson (admitted *pro hac vice*)
mpearson@akingump.com
Rubén H. Muñoz (admitted *pro hac vice*)
rmunoz@akingump.com

AKIN GUMP STRAUSS HAUER & FELD LLP
Two Commerce Square, Suite 4100
2001 Market Street
Philadelphia, Pennsylvania 19103-7013
Telephone: (215) 965-1200; Facsimile: (215) 965-1210

Attorneys for Plaintiff and Counter-Defendant CENTOCOR ORTHO BIOTECH,
INC. and Third-Party Defendants GLOBAL PHARMACEUTICAL SUPPLY
GROUP, LLC, CENTOCOR BIOLOGICS, LLC and JOM PHARMACEUTICAL
SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CENTOCOR ORTHO BIOTECH,
INC.,

Plaintiff,

v.

GENENTECH, INC. and CITY OF
HOPE,

Defendants.

AND RELATED COUNTER AND
THIRD-PARTY ACTIONS.

Case No. CV 08-03573 MRP (JEMx)

**PLAINTIFF'S REPLY IN SUPPORT
OF *EX PARTE* APPLICATION TO
COMPEL DISCLOSURE OF
INAPPROPRIATELY WITHHELD
INFORMATION**

Date: TBA

Time: TBA

Place: Hon. Mariana Pfaezler,
Courtroom 12

1 Genentech and City of Hope's response to Centocor's *Ex Parte* Application is
2 notable for what it does not say. Genentech and City of Hope do not dispute that
3 they represented to this Court that several witnesses, including Mark Sliwkowski, have
4 information that is "central" to the Cabilly II patent (Exhibit I to *Ex Parte*
5 Application, at 2). They do not dispute that they represented to this Court that the
6 relevant expert reports had been produced to Centocor in this case (Exhibit I to *Ex*
7 *Parte* Application, at 1). And they do not dispute that those reports, along with
8 related testimony, were actually withheld from the documents produced to Centocor.
9

10
11
12 Incredibly, Defendants argue that Centocor somehow should have known that
13 the withheld reports and testimony were central to the Defendant's positions on the
14 Cabilly II patent. To the contrary, Defendants did everything they could to disguise
15 that fact. Centocor asked for these documents specifically in a request for
16 production. Centocor then followed up with another direct request by letter. In
17 response, Defendants told Centocor that most of the documents from the *Chiron*
18 litigation were irrelevant and that all the documents that Defendants considered to be
19 relevant were being produced. Centocor took them at their word. It was only
20 happenstance that Centocor discovered how "central" the withheld documents were
21 to Defendants' positions, based on Defendants' very recent motion to disqualify
22 counsel in another case. Defendants' failure to produce relevant documents is
23 compounded by their failure to identify four of the involved witnesses—Mark
24 Sliwkowski, Sean Johnston, Axel Ullrich, and Gerald Bjorge—in their initial
25
26
27
28

1 disclosures to Centocor (See attached Exhibits A and B). Considering Defendants'
 2 efforts to withhold these relevant witnesses and documents and their representation
 3 that any withheld documents were not relevant to this case, the timing of this
 4 application is not due to any lack of diligence by Centocor.
 5

6 Finally, Defendants suggestion that the withheld *Chiron* documents are
 7 somehow equivalent to documents from the *Abbott* litigation is unfounded. Unlike
 8 Defendants' assertions about the *Chiron* documents, Centocor has never taken the
 9 position that documents from the *Abbott* case have anything to do with the Cabilly II
 10 patent, much less that they are "central" to the issues here. As Genentech concedes,
 11 it has no complaint regarding the *Abbott* documents (Opposition at 10).
 12
 13

14 Centocor respectfully requests that its *Ex Parte* Application be granted.
 15

16 DATED: May 6, 2010

Respectfully submitted,

17 AKIN GUMP STRAUSS HAUER & FELD LLP

18 By: /s/ Dianne B. Elderkin
 19 Dianne B. Elderkin

20 and

21 CONNOLLY BOVE LODGE & HUTZ LLP

22 By: /s/ Keith D. Fraser
 23 Keith D. Fraser
 24

25 Attorneys for Plaintiff and Counter-Defendant
 26 Centocor Ortho Biotech, Inc. and Third-Party
 27 Defendants Global Pharmaceutical Supply
 28 Group, LLC, Centocor Biologics, LLC and
 Jom Pharmaceutical Services, Inc.